BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.	I.12-01-007 (Filed January 12, 2012) (Not Consolidated)
Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.	I.11-02-016 (Filed February 24, 2011) (Not Consolidated)
Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with High Population Density.	I.11-11-009 (Filed November 10, 2011) (Not Consolidated)

JOINT PARTIES' APPEAL OF THE PRESIDING OFFICERS' DECISION ON FINES AND REMEDIES IN THE PIPELINE INVESTIGATIONS

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I. INTRODUCTION AND SUMMARY OF APPEAL

Pursuant to Rule 14.4(a) of the Commission's Rules of Practice and Procedure, the City and County of San Francisco (CCSF), the Office of Ratepayer Advocates[1] (ORA), and The Utility Reform Network (TURN) (together "Joint Parties"), appeal the Presiding Officers' Decision served September 2, 2014 regarding the fines and remedies to be imposed on Pacific Gas and Electric Company (PG&E) for operating its natural gas transmission pipeline system in an unsafe manner and for violating numerous specific pipeline safety requirements over many decades (Remedies POD).[2]

While the Joint Parties do not agree with every finding and conclusion in all four of the Presiding Officer Decisions (PODs) – one in each of the three Pipeline Investigations determining the violations, and the Remedies POD – we recognize that, if adopted with limited modifications, these four PODs provide the Commission with a reasonable, lawful, and appropriate resolution of the Pipeline Investigations. Furthermore, unnecessary litigation over the PODs would only deflect attention from the important task of overseeing the repairs and operation of PG&E's gas pipeline system to ensure public safety.

Accordingly, the Joint Parties limit their appeal to two issues in the Remedies POD. First, the Remedies POD should be modified to require PG&E shareholders to fund <u>all</u> of PG&E's Pipeline Safety Enhancement Plan (PSEP) work authorized for ratepayer recovery in Decision 12-12-030, as modified by the upcoming decision in the PSEP Update proceeding. The result would be a disallowance of $877 million of primarily capital costs.[3] The amount of the fine paid to the General Fund should be

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[1] The Division of Ratepayer Advocates (DRA) was renamed the Office of Ratepayer Advocates (ORA) effective September 26, 2013, pursuant to Senate Bill 96.

[2] In this Appeal, the Joint Parties use the same nomenclature as the Remedies POD, i.e., "fines" refers to monies to be paid to the General Fund, and "penalties" refers to the combination of fines, disallowances and remedies.

[3] The PSEP Update Settlement Agreement Among Pacific Gas And Electric Company, The Office Of Ratepayer Advocates, And The Utility Reform Network is included as Exhibit 1 to Joint Motion Of Settling Parties For Approval Of PSEP Update Application Settlement Agreement, filed July 25, 2014 in A.13-10-017 (PSEP Update Settlement Agreement).

correspondingly reduced to $473 million. As explained below, the Joint Parties' proposed allocation: (1) better reflects the remedial nature of the PSEP work; (2) better serves the goal of deterrence by preventing PG&E from collecting a 65-year return on PSEP assets; and (3) better alleviates the burden on PG&E ratepayers who – even with the reallocation of the penalties – will still be called upon to pay several billion dollars to improve the safety of PG&E's gas system. In addition, the Joint Parties' proposal avoids some of the implementation complexities of the proposed $400 million rate reduction and/or refund.

Second, Ordering Paragraph 10 of the Remedies POD, which requires PG&E shareholders to pay all of the Joint Parties' and the City of San Bruno's reasonably incurred legal expenses, should be modified in two respects: (1) the ordering paragraph should specify that PG&E may not pass on to ratepayers its own legal expenses related to these Pipeline Investigations, civil or criminal proceedings related to the San Bruno explosion, or pipeline safety violations that were revealed or charged in the aftermath of the explosion; and (2) the ordering paragraph should be modified to clarify the procedure for PG&E to reimburse the intervenors' litigation costs.

Before turning to these proposed modifications in Sections III and IV below, the Joint Parties demonstrate in Section II that the fines and other remedies recommended by the Presiding Officers in the Remedies POD are fully supported by the findings of safety violations set forth in detail in the other three PODs. Those findings are, in turn, supported by substantial evidence. If anything, the evidence, and the conclusions made in the other PODs based upon that evidence, could in fact support much more significant penalties.

II. THE VIOLATIONS FOUND IN THE PIPELINE INVESTIGATION PODS AND PG&E'S SPECIAL STATUS AS A PUBLIC UTILITY SUPPORT EVEN HIGHER PENALTIES THAN THE $1.4 BILLION PACKAGE PROPOSED IN THE REMEDIES POD

The Remedies POD represents the culmination of the three Pipeline Investigations listed in the caption of this pleading. The Commission initiated the Pipeline Investigations in light of revelations that the September 9, 2010 San Bruno explosion was not the result of a single factor or "accident," but the disastrous and preventable outcome of pervasive and long-standing PG&E mismanagement of almost every aspect of its gas system operations – mismanagement driven by a "corporate culture that emphasized profits over safety."[4]

The three PODs in the Pipeline Investigations found a total of 3,708 violations committed over multiple decades (for a total of over 18 million days in violation),[5] demonstrating PG&E's systematic and continuing mismanagement of its gas transmission system over those decades. Based on the chronicle of violations found in each of those other three PODs, the Remedies POD proposes a package of more than $1.4 billion in penalties to be funded entirely by PG&E shareholders. Those penalties include a $950 million fine payable to the State's General Fund, a $400 million rate reduction or refund to PG&E ratepayers for the costs of remedial gas transmission work PG&E performed at ratepayer expense, $50 million for PG&E to implement over 75 remedies proposed by the Commission's Safety and Enforcement Division (SED),[6] and a requirement that PG&E shareholders pay the Joint Parties' and the City of San Bruno's litigation expenses.[7]

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[4] The Order Instituting Investigation of the San Bruno explosion summarizes the conclusions of the CPSD Report on the causes of the explosion:

> The CPSD Report being issued with this Order alleged that PG&E violated the California Public Utilities Code, various federal and state pipeline safety regulations, and accepted industry standards. CPSD's investigation alleges that the incident in San Bruno was caused by PG&E's failure to follow accepted industry practice when installing the section of pipe that failed, PG&E's failure to comply with federal pipeline integrity management requirements, PG&E's inadequate record keeping practices, deficiencies in PG&E's data collection and reporting system (known as Supervisory Control and Data Acquisition, or SCADA), inadequate procedures to handle emergencies and abnormal conditions, PG&E's deficient emergency response actions after the incident, and a systemic failure of PG&E's corporate culture that emphasized profits over safety.

I.12-01-007, p. 2 summarizing Ex. CPSD-1, CPSD San Bruno Report.

[5] Remedies POD, p. 2.

[6] *See* Remedies POD, p. 3.

[7] *See* Remedies POD, OP 10, p. 167.

The fines and other remedies are amply supported by the records in the Pipeline Investigations. Indeed, the records and findings in those investigations support fines well above those proposed in the Remedies POD. In addition, PG&E's special status as a public utility, and its breach of the public trust should also be an important element in considering the appropriate magnitude and purpose of the penalties for PG&E's violations. As stated in the Remedies POD, the Commission has broad authority to "supervise and regulate" public utilities in the State and to take all actions "necessary and convenient in the exercise of such power and jurisdiction."[8] This authority is based on the United States Supreme Court's decision in *Munn v. Illinois*, which adopted the long-standing common law principle that a business with operations that affect the community at large is "clothed with a public interest."[9] The business is deemed to have dedicated its property to public use and must "submit to be controlled by the public for the common good."[10] In this regulatory compact, the public utility is granted a monopoly, allowed to recover prudently incurred costs, and given an opportunity to earn a reasonable rate of return on its investments. In exchange, the utility is required to prudently manage its assets and to provide safe and reliable service to all customers within its service territory.[11]

Public utilities are not ordinary businesses whose primary responsibility is maximizing shareholder returns; public utilities have a higher obligation to the public at large to provide an essential public service in a safe manner and at a reasonable cost. Natural gas utilities, in particular, have an obligation to operate with safety as a priority at all times because transporting natural gas under pressure is inherently dangerous – as all natural gas operators know. As this Commission stated in Decision 12-12-030 (PSEP

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[8] California Public Utilities Code § 701; Cal. Constitution Art. XII.

[9] *Munn v. Illinois*, 94 U.S. 113, 126 (1877).

[10] *Munn v. Illinois*, 94 U.S. 113, 126 (1877).

[11] *See, e.g.,* Robert L. Swartwout, "Current Utility Regulatory Practice From A Historical Perspective," University of New Mexico Natural Resources Journal, Spring 1992, Vol. 32, No. 2, pp. 313-314, available at http://lawschool.unm.edu/nrj/volumes/32/2/04_swartwout_current.pdf

Decision), this "unending obligation to ensure safety" is especially acute for natural gas utilities due to the "dimensions of the threat to public safety" including the "pace at which death and life-altering injuries can occur" and requires "an immediate awareness of the extreme public safety consequences of neglecting safe system construction and operation."[12] Thus, the officers and employees of the gas utilities "must continue to be ever conscious of the importance of safe operating practices and facilities and of their obligations to the public in that respect."[13]

The extensive records in the three Pipeline Investigations clearly demonstrate that PG&E has repeatedly failed to meet its obligations under the regulatory compact, while at the same time benefitting handsomely from the regulatory guarantees given to it. These facts "reveal a corporate culture that values cost-cutting and profit maximizing ahead of safety."[14] It would be bad enough if the 3,708 violations of law and over 18 million days of non-compliance were the result of incompetence or ignorance; however, the facts show that PG&E ran its natural gas business with a willful disregard for public safety. As the National Transportation Safety Board (NTSB) concluded:

> [M]any of the organizational deficiencies were known to PG&E, as a result of previous pipeline accidents in San Francisco in 1981, and in Rancho Cordova, California, in 2008. As a lesson from those accidents, PG&E should have critically examined all components of its pipeline installation to identify and manage the hazardous risks, as well as to prepare its emergency response procedures. If this recommended approach had been applied within the PG&E organization after the San Francisco and Rancho Cordova accidents, the San Bruno accident might have been prevented.[15]

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[12] PSEP Decision, p. 43.

[13] Presiding Officer Decision in I.12-01-007 (San Bruno POD), p. 206, quoting D.61269, 58 CPUC 413, 420 (1960).

[14] San Bruno POD, p. 206.

[15] National Transportation Safety Board, Pipeline Accident Report, Pacific Gas and Electric Company, Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010, adopted August 30, 2011 (NTSB Report), pp. 117-118 (citations omitted). The NTSB Report is in the record of I.12-01-007 as Ex. CPSD-9. The NTSB Report is available at: http://www.ntsb.gov/doclib/reports/2011/PAR1101.pdf.

Thus, the NTSB found that San Bruno was not an isolated incident; it was a potentially preventable "organizational accident" resulting from, among other things, PG&E's failure to make changes based on lessons learned from its prior pipeline accidents. CPSD and the Intervenors have demonstrated in these proceedings that this "organizational accident" resulted from a top-down corporate culture that viewed safety regulations as "expenses to be avoided rather than as good utility practices that ensure safety."[16] The Recordkeeping POD found that "PG&E has always been on notice that it is required to operate its pipeline system safely",[17] and yet "PG&E was well aware that its recordkeeping and integrity management programs were deficient."[18]

The findings in the Pipeline Investigation PODs demonstrate that, beginning in 1956 with the installation of a pipeline segment that had defects that were obvious to the naked eye, PG&E knowingly created an unacceptable risk of public harm in violation of state and federal laws and regulations by not performing necessary work on its gas transmission system – work that could have been performed with the rates PG&E was authorized to collect. Instead, PG&E flowed the savings to PG&E shareholders through dividend payments and common stock buybacks, and paid bonuses to its executives and other employees.

The Pipeline Investigations conclude, among other things,[19] that:

- PG&E engaged in over 50 years of continual and systematic failures to comply with the requirements of the Federal Natural Gas Pipeline Safety Act (NGPSA) (49 U.S.C. §§ 60101 et seq.,) federal regulatory codes implementing the NGPSA (49 CFR Part 192), the American Society of Mechanical Engineers (ASME) standards, the Commission's General Order 112, Public Utilities Code § 451, and PG&E's own risk management, pipeline integrity, and emergency response procedures.

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[16] CPSD, Opening Brief on Penalties, p. 46.

[17] Recordkeeping POD, p. 61, FOF 25.

[18] Recordkeeping POD, p. 60.

[19] This listing is not comprehensive, but highlights some of the more egregious violations.

- Notwithstanding its failure to operate its system safely and in compliance with federal and state laws and regulations over many decades, PG&E could not identify any PG&E requests for the recovery of costs for safety improvements to its natural gas transmission pipeline that were denied by the Commission.[20]

- Between 1999 and 2010, PG&E earned at least $435 million over and above its Commission-authorized return on equity.[21]

These findings support a reasonable inference that PG&E had more than sufficient funds to operate its system safely over the last decade, yet instead chose to systematically underfund its gas transmission operations and maintenance.

The Pipeline Investigations found numerous examples of PG&E's conscious underfunding of its gas system. The San Bruno POD includes a five page listing of examples documenting PG&E's practice of systematically underfunding its gas transmission division, thereby jeopardizing the safety of its gas transmission system, including:[22]

- PG&E instituted gas system work-force reductions between 1998 and 2010 that were inconsistent with PG&E's stated goal in 1985 to retain knowledge within the organization for long term operations and planning;

- PG&E moved from its systematic Gas Pipeline Replacement Program (GPRP) to a less expensive Pipeline Risk Management Program (PRMP) so that where PG&E had planned to replace 165 miles of pipeline, it only replaced 25 miles;

- PG&E used risk management program to justify its move from the more informative, and more expensive, use of In-Line Inspection (ILI) or hydrotesting for pipeline assessments required under federal regulations to less informative and less expensive assessment

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[20] San Bruno POD, FOF 113, p. 229.

[21] San Bruno POD, FOF 114, p. 230 *referring* to the Overland Audit.

[22] San Bruno POD, pp. 201-205; *see also* San Bruno POD, FOF 117-120 and 122.

methods such as External Corrosion Direction Assessment (ECDA) to "save millions of dollars;"[23]

- PG&E reduced reliance on the more informative ILI over time such that ILI accounted for 54% of the total miles of pipeline assessed by PG&E between 2005 and 2008, but in 2009 and 2010 the annual average fell nearly 100 miles, to 13% of the total miles assessed;

- PG&E made a conscious and systematic decision to move away from ILI to save money against the advice of its engineers who preferred ILI "to obtain a much better initial evaluation of the line …" and despite the fact that PG&E knew that Southern California Gas Company had made a business decision to use ILI as its primary integrity assessment method;

- PG&E failed to use informative but expensive hydrotesting as a pipeline assessment method, hydrotesting only 14 miles of its existing pipeline between 2003 and 2010;

- PG&E moved to reduce the number of leaks it repaired between 2007 and 2010, such that in October 2009 PG&E had to suspend its corrosion maintenance work for the remainder of the year to correct the large number of leaks discovered in leak re-surveys;

- PG&E adopted a "Reduce Pipeline Project Work" initiative in 2010 which was intended to defer all project work not required by code or contractual obligation to 2011 or beyond; and

- Employee warnings to PG&E management that its systematic and sustained underfunding of its pipeline safety work would create a backlog of corrective maintenance and that "[w]hile the effects of deferred maintenance can immediately impact operations and reliability, effects are most impactive [sic] when maintenance is deferred over a multiple year period as will likely be the case in 2009 to 2010."[24]

Many of the PG&E violations found in the PODs compromised public safety, including:

[23] San Bruno POD, p. 202.

[24] San Bruno POD, p. 204.

- PG&E's failure to create and retain adequate records – attributed to poor management oversight – resulted in PG&E's inability to operate and maintain its transmission pipelines in a safe manner and compromised its ability to assess and manage risks.[25]
- PG&E's failure to create and retain accurate and sufficient records on the use of salvaged pipe in Segment 180 contributed to the San Bruno explosion.[26]
- PG&E's operation of 63 pipe segments at greater pressures than allowed for the class designation and operation of 133 segments using an assumed SMYS value above 24,000 psi was unsafe.[27]
- PG&E's practice of "spiking" pressures over the MAOP in order to eliminate the need to treat manufacturing and construction threats as unstable, thereby evading legal requirements to conduct hydrostatic testing or ILI on unstable lines.[28]
- PG&E's failure to have adequate emergency response procedures in place such that it took PG&E 95 minutes to isolate the rupture and shut off the valves that were feeding the San Bruno fire, thereby prolonging the unsafe situation in San Bruno.[29]

And PG&E was aware of what it was doing. The San Bruno and Recordkeeping PODs conclude that both internal and external evidence put PG&E on notice several times over the past three decades of the need to correct its unsafe and unlawful practices, but that it repeatedly ignored this evidence, including:

- A NTSB report on a 1981 gas leak in San Francisco where PG&E took 9 hours and 10 minutes to turn off the gas due to inaccurate records;[30]

[25] Recordkeeping POD, COLs 57, 60, 63, 83, 84.

[26] Recordkeeping POD, COL 33.

[27] HCA POD, p. 20 and COL 18.

[28] San Bruno POD, p. 51 and FOF 39, p. 216.

[29] San Bruno POD, p. 181 and FOF 108, p. 228.

[30] San Bruno POD, p. 33; Recordkeeping POD, p. 60.

- Warnings from Bechtel in 1984 and 1986 that PG&E's integrity management program was at risk due to missing and inaccurate records, and of the need to correct these deficiencies;[31]

- The NTSB report on the 2008 Rancho Cordova explosion;[32]

- PG&E's Fall 2007 Program Review assessment that "long-term reliable operation is jeopardized at the current level of funding";[33]

- PG&E's 2008 Gas Transmission Program Review which stated: "[w]hile the effects of deferred maintenance can immediately impact operations and reliability, effects are most impactive [sic] when maintenance is deferred over a multiple year period as will likely be the case in 2008 to 2010";[34]

- A 2009 audit of PG&E's integrity management risk algorithm which found that the methodology suffered from "significant weaknesses" that compromised the safety of its system;[35] and

- PG&E's Spring 2009 Expense Program Review which noted that $6.4 million in Priority I and II maintenance projects were unfunded and the risks included deferral of critical maintenance and negative impacts on system reliability and efficiency.[36] That year, PG&E paid $14 million in dividends on preferred stock, $624 million in cash dividends, and $57 million in bonuses.[37]

Taken together, the evidence and analysis gathered over the past four years by the NTSB, the Independent Review Panel,[38] the CPSD investigation,[39] and the Pipeline

[31] San Bruno POD, p. 33; Recordkeeping POD, p. 60.

[32] San Bruno POD, p. 33; Recordkeeping POD, p. 61.

[33] San Bruno POD, p. 204.

[34] San Bruno POD, p. 204.

[35] San Bruno POD, p. 33, citing to DRA Opening Brief on Fines and Penalties, June 7, 2013, p. 21; Recordkeeping POD, p. 61.

[36] San Bruno POD, p. 205.

[37] San Bruno POD, FOF 123-124 and 126, p. 231.

[38] The Independent Review Panel Report (IRP Report) is in the record of I.12-01-007 as Ex. CPSD-10.

[39] CPSD's report on the San Bruno explosion is in the record of I.12-01-007 as Ex. CPSD-1.

Investigations present a picture of a public utility that has failed for over a half century in its duty to operate in the public interest and for the public benefit. The evidence shows that PG&E failed for almost 60 years to comply with laws and regulations it knew and understood in enough detail to devise strategies to try to avoid certain provisions. PG&E also knew and understood that the purpose of the laws and regulations it was ignoring or circumventing was to protect the public from harm from an inherently dangerous activity – the transportation of highly flammable natural gas through densely populated urban areas. PG&E knew and understood that these laws and regulations were designed to protect the same ratepayers who were paying PG&E large amounts of money year after year for the express purpose of replacing, maintaining, and operating the gas system. PG&E knew and understood that it was cutting costs in order to use this ratepayer money to enrich shareholders and top employees. PG&E knew and understood that its failure to comply with the laws and regulations, and its budget cutting, were creating unacceptable risks of harm to life and property. Although no proof of intent is required to establish violations of safety requirements, in this case the evidence compels the conclusion that PG&E deliberately evaded safety requirements and knowingly engaged in unsafe practices for many, many years.

There is no applicable precedent for adopting penalties in this case, because the facts of this case are unprecedented. PG&E did not simply fail to comply with certain laws and regulations at a single point in time. PG&E failed repeatedly, over many decades, to comply with a system of laws and regulations designed to protect the public from the serious harm that PG&E could cause if it were not regulated. Further, these violations are the result of PG&E's systemic failure as a business, not from isolated acts of certain negligent employees.

To the extent that penalties assessed in the Rancho Cordova explosion provide any lessons or precedent for this case, it is that a $38 million penalty is far too small to deter PG&E from causing future harm. A penalty of this magnitude is, for a company as large and profitable as PG&E, merely the cost of doing business, and serves to validate, not deter, PG&E's decades-long business practices. Here, the question is not whether there is applicable precedent, but what is the appropriate penalty for the most serious breach of the law and public trust by a public utility ever experienced in this State.

As part of the regulatory compact, PG&E exists as a public utility monopoly at the sufferance of the Commission acting on behalf of the ratepayers in PG&E's service territory. The Commission's ultimate remedy for malfeasance of this magnitude is the revocation of PG&E's right to own and operate gas transmission and retail sales operations, and the forced sale of these assets to a competent organization that will operate the assets in the public interest. Barring the most serious penalty – revocation of PG&E's certificate to operate – the maximum statutorily authorized fine under California Public Utilities Code §§ 2107 and 2108 for over 18 million days of violations is $254.3 billion and the minimum fine is $9.2 billion.[40] In that context, and in light of the totality of the circumstances in this case, penalties of over $2 billion are not just warranted, but necessary, to ensure that PG&E fully comprehends the reprehensible nature of the way it has conducted its business for the past 60 years and to deter any utility from allowing the type of carelessness and mismanagement that led to the San Bruno explosion.

III. THE COMMISSION SHOULD CHANGE THE ALLOCATION OF PENALTIES TO A FULL $877 MILLION DISALLOWANCE OF PSEP COSTS AND A $473 MILLION FINE PAID TO THE GENERAL FUND

Ordering Paragraphs 3 and 4 of the Remedies POD require PG&E to reduce the revenue requirement in PG&E's "Pipeline Safety and Enhancement Plan" (PSEP) by $400 million.[41] As the Remedies POD recognizes, the majority of the PSEP work was remedial – to correct the safety violations identified in the Pipeline Investigations:

> The majority of the projects approved in the PSEP Decision were to correct recordkeeping shortfalls and implement safety

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[40] Remedies POD, p. 77.

[41] OP 3 of the Remedies POD also refers to this as a "refund" to ratepayers, which technically is different from a prospective $400 million revenue requirement reduction. Complications relating to this ambiguity are addressed in Section III.C, below.

> improvements, including pipeline testing and replacement that had been neglected by PG&E.[42]

The Remedies POD provides an example of this remedial PSEP work, finding that the Commission authorized funding for PG&E to replace pipelines in 1986 and 1992, but that PG&E chose to perform "risk assessments" rather than replace most of those pipelines:

> Although PG&E had been authorized to collect in rates costs to replace pipeline segments as part of its Gas Pipeline and Replacement Program in 1986 and 1992, PG&E moved to performing risk assessments in the late 1990's and only replaced 25 miles of pipe between 2000 and 2010.[43]

The Remedies POD also explains that the multiple other shortcomings and violations found in these enforcement proceedings contributed to PG&E's inability to properly identify pipelines in need of replacement.[44] The Remedies POD orders a $400 million disallowance of PSEP costs as an "equitable remedy" for PG&E's failure to replace its pipelines earlier:

> PG&E should be ordered to refund $400,000,000 of costs associated with its Pipeline Modernization Program to ratepayers.[45]
>
> and
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> The additional $400,000,000 disallowance is an equitable remedy for PG&E's failure to replace pipeline as needed to ensure the safe operation of its gas transmission pipeline system.[46]

As discussed below, the record, the goal of deterrence, and important equitable considerations support a different allocation of the penalties between disallowances and fines. The logic of the Remedies POD supports a disallowance that is not limited to a

[42] Remedies POD, FOF 37. *See also* Remedies POD, p. 80.

[43] Remedies POD, COL 28, pp. 162-163.

[44] Remedies POD, p. 82.

[45] Remedies POD, COL 29, p. 163.

[46] Remedies POD, COL 30, p. 163.

partial revenue requirement reduction, but rather a full disallowance of all of the PSEP costs that would otherwise be charged to ratepayers – $766 million in capital expenditures and $111 million in expenses, for a total disallowance of $877 million.[47] Such a disallowance would: (1) better reflect the remedial nature of the PSEP work; (2) better serve the goals of deterrence and fairness to ratepayers by preventing PG&E from collecting a 65-year return on PSEP assets; and (3) better alleviate the burden on PG&E customers who will still be called upon to pay several billion dollars to improve the safety of PG&E's gas system. Leaving the POD's $1.4 billion total penalty amount and other remedies unchanged, the fine paid to the State's General Fund should be $473 million, a substantial and fully justified amount.

A. The Disallowance Should Cover All PSEP Costs Imposed on Ratepayers

As described above, the Remedies POD is clear that the majority of the work approved in the PSEP Decision, including the pipeline testing and replacement work, was to remediate the recordkeeping shortfalls and other neglect of the transmission system that the Pipeline Investigation PODs determined to be violations of applicable law.[48] The Remedies POD correctly recognizes that the Commission has the authority to disallow rate recovery of the costs of this remedial PSEP work: "Thus, to the extent that these [PSEP] projects are to address violations found in these proceedings, we may order that their costs be the responsibility of PG&E shareholders pursuant to Pub. Util. Code §§ 451 and 701."[49]

In determining $400 million to be an appropriate disallowance amount, the Remedies POD explains that PG&E's numerous and systemic violations either resulted in PG&E explicitly choosing to forego planned pipeline replacements, or contributed to PG&E's inability to identify pipelines in need of replacement so as to ensure safe

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[47] The derivation of these numbers is discussed below.

[48] Remedies POD, p. 80 and FOF 37.

[49] Remedies POD, p. 80.

operation of the pipeline system.[50] The Remedies POD states that the disallowance is an equitable remedy for this violation[51] and bases the $400 million amount on the approximate amount by which PG&E's GT&S revenues exceeded authorized levels in the years covered by the Overland Audit.[52]

While the logic of the Remedies POD is correct as far as it goes, it does not support limiting the disallowance to only a portion of the costs authorized for recovery in the PSEP Decision. Almost all of those PSEP costs – which far exceed $400 million – relate to the pipeline testing and replacement work that the Remedies POD correctly finds to be remedial.[53] Rather than limiting the disallowance to an amount matched to PG&E's revenues in excess of authorized levels between 1999 and 2010, the record better supports disallowing all of the PSEP costs made necessary by PG&E's violations.

Contrary to the Remedies POD, the Commission's statement in the <u>ratemaking</u> PSEP Decision that "ratepayers should not receive a new pipeline at no cost"[54] should not be a controlling factor in the determination of penalties for PG&E's violations. In the PSEP Decision, the Commission had not yet determined any violations by PG&E and thus was engaged purely in ratemaking. Here, the Commission's duty is to impose appropriate fines, disallowance, and other remedies in order to punish PG&E for its numerous and systemic violations, and to deter similar violations in the future. In light of the Remedies POD's correct conclusion that the PSEP work is necessary to remedy PG&E's violations, it is entirely appropriate to require PG&E's shareholders to absorb all

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[50] Remedies POD, pp. 81-83.

[51] Remedies POD, pp 82-83 and COL 28-30.

[52] Remedies POD, p. 81. The Overland Audit is in the record of I.12-01-077 as Ex. CPSD-168.

[53] D.12-12-030, pp. E2 and E3, Tables E-2 and E-3, showing that almost all of the authorized expenses and capital expenditures relate to the Pipeline Modernization Program, Interim Safety Enhancement Measures, and the Program Management Office, relate to pipeline testing and replacement and other remedial work. (As discussed below, the costs in these tables have been updated in the PSEP Update proceeding.) Only the Valve Automation Program, arguably, is not remedial in nature.

[54] Remedies POD, p. 83, *quoting* the PSEP Decision, p. 61.

of the PSEP costs.[55] Indeed, as the Remedies POD properly notes, one of the factors impacting the need for the PSEP capital pipeline replacement work is PG&E's explicit decision to defer pipeline replacement that it had repeatedly promised to do in the 1980s and 1990s.

B. The Deterrence Goal Is Better Served By A Disallowance Of Capital Recovery Rather Than A Revenue Requirement Reduction Or Refund

The Remedies POD elects to apply the disallowance as a reduction to the PSEP revenue requirement,[56] even though most of the PSEP costs are capital expenditures.[57] As this section will explain, this election would allow PG&E to collect a return on PSEP capital costs from ratepayers over many decades, muting the financial impact of the disallowance. The result would be to unnecessarily undermine the deterrence effect of the financial penalties and reduce the ratepayer value of the disallowance.[58]

An overview of the difference between capital expenditures and revenue requirement is helpful to understand the reason for the Joint Parties' concern. PG&E's rates are based on a Commission-authorized revenue requirement. That revenue requirement is primarily comprised of the following components: (1) PG&E's reasonable (as determined by the Commission) forecasted expenses, such as most costs associated with ongoing operation and maintenance activities, including labor and administrative expenses; (2) the depreciation expense associated with past capital additions; (3) the rate of return (ROR) on past capital investments, such as new pipelines, that the Commission approves as capital additions for inclusion in "rate base," and (4) taxes payable on the

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[55] Further, under basic principles of ratemaking, it would be neither just nor reasonable to burden PG&E's ratepayers with large rate increases to cover increased costs resulting from the company's decades of neglect and mismanagement of its gas transmission system. See Public Utilities Code sections 451, 463.

[56] Remedies POD, COL 31 and OPs 3 and 4.

[57] D.12-12-030, pp. E2 and E3, Tables E-2 and E-3. (As discussed below, the costs in these tables have been updated in the PSEP Update proceeding.)

[58] This concern is not new. ORA proposed throughout the Remedies phase of the proceedings that any penalties assessed against PG&E be directed first to PSEP capital expenditures in order to prevent PG&E from profiting from the San Bruno explosion. *See, e.g.,* DRA Rebuttal Brief on Fines and Remedies, June 7, 2013, pp. 16-17; DRA Second Rebuttal Brief on Fines and Remedies, August 28, 2013, pp. 9-10.

return on equity component (aka shareholder profits) of the rate of return. The Commission-authorized ROR is multiplied by PG&E's rate base and the product is included in the revenue requirement.[59] The more PG&E spends on capital assets and is allowed to put into rate base, the higher the return on rate base component of revenue requirement. PG&E's currently-approved ROR is 8.06%.[60] PG&E's return includes its shareholder profits on capital investments, and those profits also drive the tax component of the revenue requirement which must be paid by PG&E's ratepayers.

As noted above, most of the costs authorized for rate recovery in the PSEP Decision are capital expenditures.[61] At the Commission's direction, PG&E updated its PSEP costs in the PSEP Update Application,[62] and PG&E's revised (reduced) figure for PSEP capital expenditures is $766.2 million – a figure that is not challenged by any party to that case and has been accepted in a pending settlement among PG&E, ORA and TURN.[63] Thus, as things now stand, PG&E is entitled to collect in rates a significant annual return on that $766.2 million of capital costs as those costs are moved into rate base (many of which are already in rate base and adding to PG&E's revenue requirement). For the pipeline assets, PG&E would collect this return for 65 years.

With this background in mind, it can be seen that a revenue requirement disallowance and a capital disallowance of equivalent amounts would have quite different impacts on PG&E and ratepayers. If the disallowance is applied to revenue requirement (or refunds as suggested by OP 3 in the Remedies POD), it will be paid, probably in one or two years, to the benefit of ratepayers and the detriment of PG&E in roughly the

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[59] The amount of an asset's contribution to rate base is reduced by the Commission-approved depreciation amounts over the life of the asset. In D.12-12-030 (COL 26), the Commission determined that the service life of new pipelines installed in PSEP would be 65 years.

[60] CPUC Decision No. 12-12-034 authorized the most recent cost of capital parameters.

[61] As shown by Tables E2 and E3 in D.12-12-030, approximately $1 billion of the $1.17 billion in authorized PSEP costs were capital expenditures.

[62] Application (A.)13-10-017.

[63] PSEP Update Settlement Agreement, *see* Note 3, above, § 3.6. The Joint Parties do not dispute these PG&E representations regarding its authorized PSEP expenditures.

amount of the disallowance.[64] But PG&E's ratepayers would still have to pay PG&E a return for its PSEP capital investments for the 65-year life of those PSEP assets. In a recent ex parte notice provided by PG&E pursuant to the expanded ex parte rules adopted for these proceedings,[65] PG&E calculated that, for each $100 million of PSEP capital costs in rate base, ratepayers will pay $424 million over the life of those investments.[66] Even when discounted to a net present value, the cost to ratepayers to pay PG&E's return on that investment would still significantly exceed the benefit of an equivalent revenue requirement reduction. Depending on the discount rate used, according to PG&E, the net present value of that stream of payments by ratepayers would be $178 million for a 5% discount rate, $143 million for a 7% discount rate, and $110 million for a 10% discount rate.[67] Accepting for purposes of argument PG&E's preference for the 7% rate based on its cost of capital,[68] a capital disallowance would have a 43% greater impact than a revenue requirement reduction of equal nominal value.

As a result, there is a significant mismatch between the Remedies POD's intent to impose a disallowance related to PG&E's failure to perform necessary capital improvements and the adopted disallowance of PG&E's revenue requirement – a mismatch that significantly benefits PG&E at the expense of ratepayers. Because the

[64] If the revenue requirement reduction or refund is not all paid right away, then a net present value (discount rate) analysis would be necessary to determine the financial impact on ratepayers and PG&E.

[65] *See* Administrative Law Judges' Ruling Granting Motion For One Day Notice Of All Communications With Commissioner Offices And Commission Advisory Staff, issued in these proceedings on September 24, 2014.

[66] Although these calculations are not part of the evidentiary record and have not been vetted in these proceedings, the Commission may take notice that this is PG&E's calculation that was provided to Commission staff on September 22, 2014. As PG&E is the source of the information and provided it to the Commission, PG&E would not be prejudiced if this information were to be used in this proceeding. The Joint Parties also note their concern that this information was requested by Commission staff and provided to them by PG&E without any notice to the other parties in this proceeding. These communications would likely not have been made public absent the Joint Parties' Motion resulting in the ruling that all such communications must be reported. Absent such reporting, PG&E would have had unique and unfair insight into the Commission's deliberative process.

[67] *See* the Attachment to PG&E's Notice of Ex Parte Communication filed in these proceedings on September 26, 2014.

[68] *See* the Attachment to PG&E's Notice of Ex Parte Communication filed in these proceedings on September 26, 2014, p. 2.

neglected pipeline replacement and most of the other remedial PSEP work consists of capital expenditures, the remedy would more closely fit the violation if the PSEP capital costs were removed from rate base and disallowed from recovery.

In addition, the goal of deterrence would be poorly served by allowing PG&E to profit off of its remedial PSEP work for the next 65 years. The San Bruno POD finds that PG&E created an "unreasonably unsafe system" by "continuously cutting its safety-related budgets for its GT&S"[69] as a result of a corporate culture that "values cost-cutting and profit maximizing ahead of safety."[70] It would be a more appropriate and effective deterrent to reduce PG&E's ability to earn profit for remedial work required to repair the very problems created by PG&E.

If the disallowance is applied to pay down the cost of PG&E's capital expenditures – like paying principal on a mortgage – it will significantly reduce the amount of money ratepayers will have to pay to PG&E for the PSEP over time.[71] This re-allocation of the disallowance reflects the fact that PG&E owed a duty directly to its ratepayers – not to the Commission or the State of California – to operate in the ratepayers' interest, and the remedy for the breach should serve to make the ratepayers whole to the maximum extent possible.

C. Full Disallowance of PSEP Costs Avoids Implementation Complications Raised By The Remedies POD's $400 Million Revenue Requirement Reduction

The mechanics of the revenue requirement reduction in the Remedies POD are unclear and likely to be more cumbersome than the full PSEP disallowance recommended by the Joint Parties. The Remedies POD states that PG&E would be

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[69] San Bruno POD, COL 49, p. 239.

[70] San Bruno POD, p. 206.

[71] As ORA explained in its Second Rebuttal Brief filed on August 28, 2013 at p. 10: "Using credits [i.e. the $400 million] to pay for authorized capital expenses is analogous to paying down a home mortgage – you not only pay for your home (or the utility asset), you ultimately pay less interest to the bank (and less in revenue requirement to PG&E). By applying the [$400 million] only to authorized capital expenses that would otherwise go into rate base, ratepayers are saved the annual cost of paying PG&E revenue requirement on those capital investments.

required to "reduce" its revenue requirement and "refund" $400 million to ratepayers to be implemented by a change in the "Implementation Plan Rate" component of PG&E's natural gas rates.[72] However, the total PSEP revenue requirement for 2012-2014 is likely to be $223 million,[73] far less than the POD's $400 million reduction. And the one-year PSEP revenue requirement for 2015 is likely to continue to be considerably less than $400 million. (The size of these revenue requirement numbers reflects the fact that most of the PSEP costs in rates are for capital costs and are recovered, together with profit and taxes, in revenue requirements over the course of 65 years.) Thus, the POD leaves unclear how the revenue requirement reduction is to be implemented. If applied against future revenue requirements, it could take several years before PG&E has paid down the full $400 million, which, in net present value terms, would inure to the benefit of PG&E and the detriment of ratepayers.[74] If refunds of amounts paid by ratepayers in the past are to comprise part of the $400 million, then complications would likely arise in determining the amount to be refunded versus the amount to be offset against future rate recovery.[75]

In contrast, the Joint Parties' recommended disallowance of all PSEP costs is much simpler to implement from a ratemaking perspective. The full disallowance would mean that PG&E would no longer have any PSEP costs to recover in the PSEP rate element; PG&E would simply remove that component from its rates. In addition, PG&E

[72] Remedies POD, OPs 3 and 4, p. 166.

[73] The total 2012-2014 PSEP revenue requirement determined in D.12-12-030 (p. 3) was $299 million, but this amount will be reduced by PG&E's PSEP Update Application, A.13-10-037. The $223 million figure cited in the text is the reduced total proposed in Section 4.1 of the PSEP Update Settlement Agreement Among Pacific Gas And Electric Company, The Office Of Ratepayer Advocates, And The Utility Reform Network, included as Exhibit 1 to Joint Motion Of Settling Parties For Approval Of PSEP Update Application Settlement Agreement, filed July 25, 2014 (PSEP Update Settlement Agreement).

[74] In terms of the above comparison of the hypothetical $100 million revenue requirement vs. capital disallowance, a revenue requirement reduction that took years to pay off would have a net present value less than $100 million, the specific figure being dependent on the length of the period and the discount rate used.

[75] Section 453.5 requires refunds to be paid to "all current utility customers and, when practicable, to prior customers, on an equitable pro rata basis . . . ."

would refund all PSEP revenue requirements it has previously collected in rates, avoiding complications about determining how much money should be refunded. To minimize time value of money impacts, the Joint Parties recommend that such refunds be implemented in no more than six months. In addition, to prevent any future questions or disputes, a revised Remedies POD should make clear that all PSEP capital costs – $766.2 million if the PSEP Update Settlement is approved – should be removed from rate base and ineligible for recovery in rates.[76]

D. The Joint Parties Recommend A $473 Million Fine Payment To The General Fund

The Joint Parties agree with the Presiding Officers that the fine paid to the General Fund must be high enough to meet a number of public policy objectives, especially deterrence. However, the Joint Parties believe that a fine of $473 million ($950 million less the additional $477 million supplement needed to pay all PSEP costs that would otherwise be borne by ratepayers) would meet the same policy objectives as the $950 million proposed in the Remedies POD. Combined with a full PSEP disallowance consisting mostly of a disallowance of capital expenditures, such a fine amount would send a strong deterrent message, prevent PG&E from reaping profits on its costs to fix its systemic violations, and more equitably compensate PG&E ratepayers for the harm done to them. Because PG&E's ratepayers will likely be asked to pay upwards of $10 billion in upgrades to PG&E's system over the next few years,[77] the Commission should act to mitigate the impacts of that burden, especially by disallowing authorized capital expenditures.

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[76] Pursuant to the PSEP Update Settlement, the Joint Parties understand that the $766.2 million is anticipated to include the costs for some PSEP projects that may not be complete until sometime in 2015.

[77] In R.11-09-019 (the PSEP proceeding) PG&E estimated that Phase 2 of its PSEP would cost between $6.8 billion and $9 billion. See R.11-09-019, Ex. 149, p. 2 and note 5. This estimate was made in 2011, and the Phase 2 PSEP work has now been folded into PG&E Gas Transmission and Storage (GT&S) (A.13-12-012). PG&E has asserted in its GT&S rate case that its current costs are substantially higher than those forecasted for PSEP.

IV. THE PROVISION REQUIRING PG&E SHAREHOLDER PAYMENT OF LITIGATION EXPENSES SHOULD BE CLARIFIED TO APPLY TO PG&E'S OWN LITIGATION EXPENSES AND TO SPECIFY A PROCEDURE TO DETERMINE THE REASONABLENESS OF INTERVENOR EXPENSES

Ordering Paragraph 10 of the Remedies POD requires PG&E shareholders to pay all the reasonably-incurred litigation expenses of ORA, TURN, CCSF, and the City of San Bruno. The Joint Parties agree that it would be inappropriate for ratepayers to be required to pay any litigation costs of <u>any</u> party. However, this Ordering Paragraph needs to be clarified in two respects: (1) to provide more clarity regarding the procedure for payment of the named intervenors' legal expenses; and (2) to clarify that shareholders must also pay for all of <u>PG&E's</u> legal expenses flowing from the San Bruno explosion.

Specifically, Ordering Paragraph 10 provides:

> Pacific Gas and Electric Company's shareholders shall pay all reasonably-incurred litigation expenses, including the expert witness fees, in connection with these three proceedings for the City of San Bruno, the Office of Ratepayer Advocates, The Utility Reform Network and the City and County of San Francisco. This would include expenses incurred from the initiation of the proceedings through the effective date of this decision.

The Joint Parties fully support the intent of this Ordering Paragraph. However, it would benefit from clarifying the procedure for determining whether the named intervenors' legal expenses are "reasonably-incurred," a determination that should not be left to PG&E. Accordingly, the Joint Parties propose that the Ordering Paragraph be revised to provide that they may submit their legal expense requests to the Commission's Administrative Law Judge Division for review and approval, similar to intervenor compensation requests, but with the following modifications.

First, the Ordering Paragraph should require only a summary identification of the hours worked each month by each attorney for the named intervenors, rather than requiring disclosure of attorney-client privileged information such as hourly billing records. Additionally, ORA does not keep billing records in the format required for recovering legal expenses through the Commission's intervenor compensation rules. Thus, the named intervenors should only be required to provide a summary of the hours spent on the total of the three investigations on a monthly basis, by attorney, and by expert witness, when applicable.[78]

Second, the Ordering Paragraph should recognize that the intervenor compensation program approved hourly rates do not necessarily reflect the market rates for similarly experienced attorneys in the private sector, particularly in such extremely challenging and complex cases as the Pipeline Investigations. While intervenor compensation rates should serve as a floor, the applicable rates for the named intervenors' attorneys in these cases should be equivalent to the rates for lawyers of comparable experience charged by PG&E's outside attorneys with Orrick, Herrington, and Sutcliff, LLP, the law firm working in these cases.[79]

To the extent that PG&E's outside counsel objects to the public disclosure of its billing rates, and if the Commission agrees that confidentiality is warranted, such rates should be provided to the named intervenors under a non-disclosure agreement. If the named intervenors rely on rates determined to be confidential in their requests for compensation, the named intervenors can seek to file a confidential version of their requests under seal in accordance with Commission rules.

Finally, the San Bruno explosion and the subsequent investigations into PG&E's gas pipeline operations have led to a myriad of legal challenges in addition to the three Pipeline Investigations at issue here, including two orders to show cause in R.11-02-019, criminal prosecutions by the U.S. Department of Justice, and more than one shareholder derivative lawsuit.[80] The cost of defending these various legal actions is enormous. In its

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[78] A substantial amount of legal work was for all three of the Pipeline Investigations at once, e.g., on settlement efforts, and on penalties.

[79] If PG&E's outside lawyers are not required to make public the range of hourly rates (based on experience levels) that they charged PG&E in this case, they should at least be required to furnish that information to intervenors under a non-disclosure agreement including a provision that would allow such rate information to be kept under seal in the Commission's files.

[80] See, e.g., the criminal indictment U.S. v. PG&E, CR 14-175 (TEH) for violations of 49 U.S.C. 60123,

reports filed with the Commission pursuant to General Order 77 (GO 77) for 2012 and 2013, PG&E disclosed that its Gas Division paid Orrick, Herrington & Sutcliff, LLP, the law firm representing it in the Pipeline Investigations, over $6.3 million in 2012 and over $7.5 million in 2013. The GO 77 Reports show that PG&E's Gas Division paid Latham & Watkins, the law firm representing PG&E in the criminal cases, over $8.4 million in 2012 and over $13.9 million in 2013. These costs total over $36 million combined for 2012 and 2013 and it is not unreasonable to anticipate that PG&E's total costs of defending all of these and related legal actions could reach well over $100 million.[81] While it may be that not all of the work of these firms is attributable to defending against charges of operating a gas transmission system in an unsafe manner, these costs are representative of the magnitude of the costs to defend PG&E that ratepayers could be asked to pay. PG&E's legal bills associated with the gas pipeline safety cases are, and will continue to be, significant and should not be paid by PG&E ratepayers.

As the PODs document, PG&E brought these legal proceedings upon itself as a result of multiple, knowing, and longstanding violations of state and federal laws, regulations, and industry practices – all compromising the safety of its high pressure gas transmission system. In sum, the Joint Parties propose that Ordering Paragraph 10 be revised as follows:

> Pacific Gas and Electric Company's shareholders shall pay all reasonably-incurred ~~litigation~~ legal fees and expenses, including without limitation the expert witness fees, in connection with ~~these three proceedings~~ the Pipeline Investigations for the City of San Bruno, the Office of Ratepayer Advocates, The Utility Reform Network and the City and County of San Francisco. This ~~would~~ shall include all reasonably-incurred fees and expenses related to the subject matters of these proceedings incurred from ~~the initiation of the proceedings through the effective~~

the Natural Gas Pipeline Safety Act (Northern District of California, San Francisco); and the shareholder derivative law suit Hind Bou-Salman, et al. v. PG&E, CIV 524283, (Superior Crt. CA, County of San Mateo).

[81] There are many other law firms, expert witnesses, consultants, etc. also involved in representing PG&E in pipeline safety-related actions and proceedings.

~~date of this decision~~ September 9, 2010 through the final decision in these proceedings.

The parties listed above may file requests for compensation to be paid by PG&E's shareholders according to the procedural timelines set forth in Rules 17.3 and 17.4 of the Commission's Rules of Practice and Procedure, as follows:

- Parties shall provide a summary identification of the hours worked each month by each attorney and/or expert witness. No further breakdown, such as among the different investigations, will be required;
- The hourly rates approved by the Commission for payment by PG&E's shareholders shall be based on the hourly rates charged to PG&E in these cases by PG&E's outside attorneys with Orrick, Herrington, and Sutcliff, LLP (Orrick) of comparable experience to the Intervenors' attorneys. Within 15 days of the issuance of this Decision, PG&E shall provide to the named parties a list of the hourly rates charged to PG&E by Orrick attorneys in these cases and the number of years of experience of those attorneys. If PG&E or Orrick desires to keep those rates out of the public record, PG&E or Orrick shall file a motion seeking confidential treatment of that information. The assigned administrative law judge shall resolve such motion on an expedited basis after allowing the named parties an opportunity to respond. In no event, shall the hourly rates approved by the Commission be lower than the applicable rates under the Commission's intervenor compensation program.
- The named parties' requests for compensation by PG&E's shareholders shall be decided by decision of the Commission. Within 15 days of any such decision, PG&E shall pay the amount determined by the Commission out of shareholder funds.

To clarify that PG&E shareholders shall be responsible for all of PG&E's legal costs, the Joint Parties propose that the following Ordering Paragraph 11 be added to the Remedies POD:

PG&E shareholders shall pay all of PG&E's legal expenses incurred on or after September 9, 2010 for the purpose of defending these proceedings, and any other proceedings that can reasonably be construed to be related to the San Bruno explosion or the Pipeline Investigations, including, without limitation the National

Transportation Safety Board Investigation, shareholder derivative lawsuits, lawsuits brought by the City of San Bruno or any of the explosion victims and/or their survivors, and the defense of any criminal proceedings. Legal expenses shall include, without limitation, expert witness fees, and the costs associated with PG&E employee time devoted to those proceedings.

V. CONCLUSION

The well-founded findings of over three thousand safety violations and over 18 million days of non-compliance in these Pipeline Investigations support penalties well above those proposed in the Remedies POD. PG&E's special status as a public utility, and its egregious breach of the public trust over a very long period of time, should also be considered in determining the appropriate magnitude – and purpose – of the penalties for PG&E's violations.

The Presiding Officers' recommended $1.4 billion total penalty (which includes a $950 million fine and a $400 million reduction in ratepayers' costs for PG&E's PSEP) is, however, lawful, reasonable, and appropriate. Assuming this total penalty amount remains unchanged, the Remedies POD should nevertheless be modified to reallocate it. PG&E shareholders should be required to fund all of PG&E's PSEP work, which would amount to a disallowance of $877 million of primarily capital costs. The amount of the fine paid to the General Fund should be correspondingly reduced to $473 million. This allocation better serves the goal of deterrence by preventing PG&E from collecting a 65-year return (profit) on PSEP assets, and better alleviates the financial burden on PG&E ratepayers, who will still be called upon to pay several billion dollars to improve the safety of PG&E's gas system.

Two other clarifications should be made in the Remedies POD. Ordering Paragraph 10, which requires PG&E shareholders to pay all of the reasonably incurred litigation costs of TURN, ORA, CCSF and the City of San Bruno, should be clarified to provide procedures for those named intervenors to submit their requests for reimbursement. Further, language should be added to clarify that PG&E may not pass on to ratepayers its own legal expenses for the Pipeline Investigations or for criminal and civil proceedings related to the San Bruno explosion or pipeline safety violations that came to light in the aftermath of the explosion. The Joint Parties' proposed clarifications to address both of these issues are provided at the end of Section IV above.

Respectfully submitted,

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